

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CV 14-0563 RB/SMV
CR 10-0699 RB

MAGDALENE MIRANDA,

Defendant.

MEMORANDUM OPINION AND ORDER OF DISMISSAL

This matter is before the Court, *sua sponte* under rules 4(b) and 11(a) of the Rules Governing Section 2255 Proceedings, on Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (CV Doc. 1; CR Doc. 111) filed on June 19, 2014. On February 8, 2012, this Court entered judgment (CR Doc. 96) on Defendant's conviction, and she did not appeal her conviction or sentence. Defendant filed a first § 2255 motion (CR Doc. 101) on February 11, 2013, which the Court denied (CR Doc. 110) on the merits. She then filed the instant motion challenging her sentence. This is Defendant's second § 2255 motion, and the Court will dismiss the motion for lack of jurisdiction.

At approximately the same time that Defendant filed her § 2255 motion, she also filed a petition in the Court of Appeals for the Tenth Circuit seeking authorization to file a second or successive § 2255 motion (CV Doc. 2; CR Doc. 112). On July 10, 2014, the Court of Appeals denied Defendant's petition for authorization (CV Doc. 4; CR Doc. 114). Because the Court of Appeals has prohibited Defendant from prosecuting her motion in this Court, the motion must be dismissed for lack of jurisdiction.

When a second or successive § 2254 or § 2255 claim is filed in the district court without the required authorization from this court, the district court may transfer the matter to this court if it determines it is in the interest of justice to do so under

§ 1631, or it may dismiss the motion or petition for lack of jurisdiction.

In re Cline, 531 F.3d 1249, 1252 (10th Cir. 2008). Under the rule stated in *Cline*, the Court will dismiss Defendant's § 2255 motion for lack of jurisdiction.

Furthermore, *sua sponte* under rule 11(a) of the Rules Governing Section 2255 Cases, the Court determines that Defendant has failed to make a substantial showing that she has been denied a constitutional right. The Court will therefore deny a certificate of appealability.

IT IS THEREFORE ORDERED that Defendant's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (CV Doc. 1; CR Doc. 111) filed on June 19, 2014, is DISMISSED for lack of jurisdiction; a certificate of appealability is DENIED; and judgment will be entered.

A handwritten signature in black ink, appearing to read "Robert Zach", is written above a horizontal line.

UNITED STATES DISTRICT JUDGE